lower court (pp. 233, 251). The author has gathered together in one treatise the whole subject of federal appellate procedure. The statutes and rules are not printed in an appendix but important sections are given in the text and the references thereto, as well as to decisions, are sufficiently full and specific. The statement of the rules is terse and the book commendably free from padding. The publishers have reverted to the large print, thick paper and stiff binding, a good plan for a small book, such as this. The treatise is not a contribution to the theory, science or reform of federal appellate procedure, but it seems to serve the purpose for which it was intended—to help the practitioner prepare his appeal correctly in the least possible time.

A. M. K.

EQUITY IN ITS RELATION TO COMMON LAW. By William W. Billson. Boston Book Co., Boston, Mass., 1917. pp. xii, 234. $3.50.

Mr. Billson's book is an argument in support of three propositions: first, that equitable relief has never been limited to the correction of procedural defects of the common law, but has been directed to the enforcement of a "superior morality;" second, that the moral deficiencies of the law, which equity corrected, often lay in its substantive principles; third, that equity is therefore not a system of supplementary remedies, but a body of substantive law, often "in conflict" with the common law. The second and third propositions are really corollaries of the first, which, in the preface, is stated as the primary thesis of the author. But their relations have not always been clearly recognized: courts of equity have themselves disclaimed any sweeping program of morality—curiously enough, Mr. Billson nowhere explicitly refers, even, to these innumerable disclaimers,—and many writers have denied the third proposition without denying the others.[1]

At first blush it would seem unnecessary to write a book to establish Mr. Billson's propositions; that, in particular, the frequent denials of substantive "conflict" between law and equity could not be literally understood by students. But a reading of the book justifies it. If the sweeping assertions of Langdell and Maitland were literally meant they were erroneous; if not, they are at least misleading. Any systematic effort to hasten or increase the fusion of the two portions of our law should be preceded by agreement as to their fundamental relations, and it is therefore well that the dicta in question should be challenged. Mr. Billson has confuted them in thorough manner, illustrating his contentions amply and interestingly with examples from many fields of equity. His statement (p. 61) of the reasons why the procedural

[1] Cf. the note on Professor Langdell's views, p. 13.

element has been magnified undoubtedly contains much truth. "'Equity acts upon the person' is, and always has been"—said Dean Ames—"the key to the mastery of equity." Mr. Billson would say, "That equity acts to enforce a higher morality than that of the common law (aided or hampered, as the case may be, by the rule 'equity acts upon the person,' p. 37) is the key to the history of equity." Mr. Billson's formula is on the whole true, and certainly the principle it expresses would be more fruitful if it could be freely developed. But courts of equity never were free to develop it except within the limitations imposed by the jealousy of the common law courts, their own ideas of morality involving property rights, and, above all, their enforcement of their decrees in personam. Again, in his desire to subordinate the procedural aspect of equity he seems sometimes to go astray, himself. His whole argument (pp. 75-92) that specific performance of a contract to convey land is not the cause, but the effect, of the fact that the right of the vendee is "real," is unsatisfactory. That any right, in law, is what courts will enforce, and therefore the result of, and in nature determined by, such enforcement, is implicit in the general argument of the book; but on this point the author goes upon a theory of natural law, which elsewhere he expressly repudiates (p. 38, note). Langdell's criticism of Hughes v. Morris (pp. 12, 82) was sound.

The whole book is stimulating, though the introductory chapters, comparing English and praetorian equity, are less firm and coherent than the rest; and there is not an obscure sentence in the volume. That other students may have anticipated Mr. Billson (in publication) as to one or many points seems truly of no importance. It is to be hoped that in another volume he may deal with all the principles of equitable relief (only three of which, out of nine, are adequately discussed in his present study) which are listed on pages 94-96. An even fuller history of legal interpretation, as affected by equity, than is given in chapter VI, and a far fuller utilization of American cases on all topics would be particularly desirable; and scores of minor points, barely referred to, cry out for fuller treatment. Above all, the very subject of the book seems to demand a clear and systematic discussion of the fusion of law and equity, yet there is none. When we are told in the first sentence of the book that "as a distinct jurisprudence English equity must be considered to have run substantially its unique course" (p. 3), and are afterwards told, very admirably, the qualities that characterize a legal system that is "well-matured"—evidently through the fusion of legal and equitable principles (p. 34),—is it possible that Mr. Billson means us to infer that in his opinion our law has reached such a fusion of "the logical and the ethical?" If not, then how far, in his opinion, has fusion gone;

how far is it possible or desirable; and what are present tendencies, particularly in the decisions rendered by American judges trained primarily in the common law? Are Dean Pound's opinions respecting "the decay of equity"[2] accepted by Mr. Billson? We are greatly indebted to him for the present scholarly book, but a much more valuable one might still be written, doubtless, from his accumulated materials.

F. S. P.

NORMAN INSTITUTIONS. By Charles Homer Haskins. Harvard Historical Studies, Volume xxiv. Harvard University Press, Cambridge, Mass. 1918. pp. xv, 377. $2.75 net.

Professor Haskins is well known through his articles published since 1903, as the preëminent authority on his subject. The earlier portions of his work have been revised and expanded and the whole series of studies given chronological continuity by the addition of a chapter on Normandy under Robert Courthose and William Rufus. His book thus covers the whole of the creative period of Norman institutional history extending to the death of Henry II. There are a number of important appendices, largely devoted to source materials and affording excellent illustration of the writer's solid and painstaking scholarship. Among these are the Norman *Consuetudines* and *Justicie* of William the Conqueror, a document containing the body of Norman law formulated soon after the Conqueror's death and first published in a critical edition by the author of this book. Other noteworthy appendices contain a set of documents concerning the Norman courts in the period 1139-1191 and unpublished charters of Robert Courthose and of Henry I.

Norman institutions, belonging both to continental and to English history, have been slighted by writers in both fields as if falling outside of either. Moreover, the source material is meagre, scattered and difficult to interpret. It is quite insufficient, as Professor Haskins states, to render a constitutional history of Normandy a possibility. But he has given the student of early English government and law a view of Norman institutions in operation and has done much to aid him in answering the question of origins which constantly arises. It is now possible to attempt with some confidence a designation of those features of English polity in the later eleventh and the twelfth century which were introduced from Normandy. The author has carefully considered the conclusions of such noted investigators of Norman history as Stapleton, Brunner and Delisle, but has sought only to add to existing

---

[2] 5 Columbia Law Review, p. 20.